

## Nuclear Regulatory Commission

## Pt. 2, App. D

held separately from the hearing held on matters of radiological health and safety and common defense and security described in sections I-VIII of this appendix. The notice of hearing will fix a time for the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with section 189a of the Act and other provisions of this part. However, as permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to December 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust consideration or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later, the Commission may issue a construction permit or operating license, provided that the permit or license so issued contains the condition specified in §50.55b of this chapter.

(f) Hearings on antitrust aspects will be conducted by a presiding officer, either an Administrative Law Judge or an atomic safety and licensing board comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom will have such technical or other qualifications as the Commission deems appropriate to the issues to be decided.

(g) When the Attorney General has advised that there may be adverse antitrust aspects and recommends that a hearing be held, the Attorney General or his designee may participate as a party in the proceedings.

(h) At the hearing, the presiding officer will give due consideration to the advice received from the Attorney General and to evidence pertaining to antitrust aspects received at the hearing.

(i) The presiding officer will, in the initial decision, make a finding as to whether the activities under the proposed license would

create or maintain a situation inconsistent with the antitrust laws as specified in section 105a of the Act. If the presiding officer finds that such a situation would be created or maintained, it will consider, in determining whether the permit or license should be issued or continued, such other factors as it deems necessary to protect the public interest, including the need for power in the affected area. The certainty of contravening the antitrust laws or the policies clearly underlying these laws is not intended to be implicit in this standard; nor is mere possibility of inconsistency. The finding will be based on reasonable probability of contravention of the antitrust laws or the policies clearly underlying these laws. The presiding officer will conclude whether, in its judgment, it is reasonably probable that the activities under the license would, when the license is issued or thereafter, be inconsistent with any of the antitrust laws or the policies clearly underlying these laws.

(j) On the basis of the findings in the proceeding on the antitrust aspect of the application, the presiding officer may (i) authorize the issuance of the permit or license after favorable consideration of matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, at the hearing described in sections I-VIII of this appendix; (ii) authorize the continuation of a permit or license already issued; (iii) direct the denial of the application for the permit or license, or the rescission of a permit or license already issued; or (iv) authorize the issuance of a permit or license subject to appropriate conditions, and subject to favorable consideration of matters of radiological health and safety and common defense matters raised under the National Environmental Policy Act of 1969 at the hearing described in sections I-VIII of this appendix.

[31 FR 12777, Sept. 30, 1966]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting appendix A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

### APPENDIXES B-C TO PART 2 [RESERVED]

#### APPENDIX D TO PART 2—SCHEDULE FOR THE PROCEEDING ON APPLICATION FOR A LICENSE TO RECEIVE AND POSSESS HIGH-LEVEL RADIOACTIVE WASTE AT A GEOLOGIC REPOSITORY OPERATIONS AREA

Day	Regulation (10 CFR)	Action
0	2.101(f)(8), 2.105(a)(5)	FEDERAL REGISTER Notice of Hearing.
30	2.1014(a)(1) 2.715(c)	Petition to intervene/request for hearing, w/contents. Petition for status as interested government participant & interested government participant petitions.
50	2.1014(b)	Answers to intervention & interested government participant petitions.
70	2.1021	1st Prehearing Conference.